

# GENERAL STATUTES

OF

# MINNESOTA

1913

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**5730. Charges—Commissioner—Witnesses.**—The suspended treasurer may notify the governor that he desires a hearing upon the charges made against him, whereupon the governor shall cause the same to be reduced to writing, and a copy thereof to be furnished such treasurer. He shall appoint a special commissioner to take and report the testimony for and against such officer. Such commissioner shall notify the treasurer of the time and place when and where he will take such testimony, and shall also notify the county attorney, who shall appear for the county upon such examination. (2674)

85-41, 88+412, 89 Am. St. Rep. 534.

**5731. Hearing—Decision—Demand, when made.**—The governor shall fix the time and place of hearing on the report, and give the treasurer notice thereof. If, upon hearing, the charges are sustained, the governor shall make his order removing said treasurer from office absolutely, and the treasurer ad interim shall continue to discharge the duties of treasurer until his successor is elected and qualified; but if, upon such hearing, the charges are not sustained, the treasurer shall be restored to office: Provided, that if the suspended treasurer shall not, within thirty days after the date of the order of suspension, demand a hearing, such neglect shall create a vacancy in the office, and the treasurer ad interim shall continue in office as in case of a removal. (2675)

85-41, 88+412, 89 Am. St. Rep. 534.

**5732. Fees of commissioners and witnesses—How paid.**—The fees of the special commissioners provided for in this chapter shall be the same allowed by law to referees, and witnesses giving testimony for the prosecution before such commissioner shall be allowed the same fees as witnesses in the district court. In cases of removal by the governor of state officers, such fees shall be paid by the state out of moneys not otherwise appropriated, on the order of the governor. On presentation of such order to the state auditor, he shall draw his warrant upon the state treasurer in favor of the person entitled to the same; but, when testimony is taken for or against a county officer, the fees of the commissioner and witnesses for the prosecution shall be paid by the county, upon allowance by the county board, in the same manner as other claims against the county. In such proceedings against a county officer, when testimony is taken by a shorthand reporter, his fees shall be the same as allowed district court reporters for like services, and the county board shall provide for its payment; but, if such services are performed by the commissioner, he shall be paid only reporter's fees. In such case the county board, in its discretion, may allow to counsel compensation not exceeding ten dollars per day for the time actually engaged before the commissioner (2676)

84-130, 86+890; 85-41, 88+412, 89 Am. St. Rep. 534.

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## CHAPTER 48

### OATHS AND ACKNOWLEDGMENTS

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#### OATHS

**5733. Oath of office.**—The oath of office to be taken by members and officers of either branch of the legislature shall be that prescribed by sec. 29 of art. 4 of the constitution. Every person elected or appointed to any other public office whatsoever, including every official commissioner, or member of any public board or body, before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in sec. 8 of art. 5 of the constitution. (2677)

82-420, 85+155; 83-194, 86+20.

Sufficiency of oath (104-252, 116+486, 16 L. R. A. [N. S.] 1058).

Cited (109-360, 123+1074).

**5734. Trustees, referees, etc.**—Unless otherwise provided by law, every executor, administrator, guardian, trustee, referee, arbitrator, viewer, assessor,

appraiser, and other person appointed by or made responsible to the court in any action or proceeding, before entering upon his duties as such, shall take and subscribe the following oath:

I, A. B., do swear that I will faithfully and justly perform all the duties of the office and trust which I now assume as (insert brief description of office), to the best of my ability. So help me God. (2678)

Presumption that referee took oath (18-90, 72).

**5735. Forms of oath in various cases**—An oath substantially in the following forms shall be administered to the respective officers and persons hereinafter named:

1. To grand jurors:

You each do swear that you will diligently inquire, and true presentment make, of all public offences committed within this county of which you have legal proof; the counsel of the state and of yourself and fellows you will keep secret; you will present no person through malice or ill-will, nor leave any unpresented through fear or favor, or the receipt or hope of reward, but will present things truly to the best of your understanding and according to law. So help you God.

2. To petit jurors in civil actions:

You each do swear that you will impartially try the issues in this case, and a true verdict give, according to law and the evidence given you in court; your own counsel and that of your fellows you will duly keep; you will say nothing to any person concerning the case, nor suffer any one to speak to you about it, and will keep your verdict secret until you deliver it in court. So help you God.

3. To petit juries in criminal cases:

You each do swear that, without respect of persons or favor of any man, you will well and truly try, and true deliverance make, between the state of Minnesota and the defendant, according to law and the evidence given you in court. So help you God.

4. To officers attending grand juries:

You do swear that, as officer of the grand jury, you will keep their counsel and that of the state, and not disclose anything relative to their proceedings. So help you God.

5. To same in charge of petit juries:

You do swear that you will keep this jury together, and, so far as may be, secluded, so long as they shall remain in your charge; will suffer no one to communicate with or overhear them while deliberating upon their verdict; and will not by word or sign disclose, except to the court alone, anything that may come to your knowledge concerning their action in this case until they are duly discharged.

6. Same, in charge during recess:

You do swear that you will keep together this jury until they return into court, and that in the meantime you will suffer no one to speak to them, nor speak to them yourself, concerning the cause on trial, or any matter relating thereto.

7. To witnesses:

You do swear that the evidence you shall give relative to the cause now under consideration shall be the whole truth, and nothing but the truth. So help you God.

8. To interpreters:

You do swear that you will truly and impartially interpret to this witness the oath about to be administered to him, and the testimony he shall give relative to the cause now under consideration. So help you God.

9. To attorneys:

You do swear that you will support the constitution of the United States and that of the state of Minnesota, and will conduct yourself as an attorney and counselor at law in an upright and courteous manner, to the best of your learning and ability, with all good fidelity as well to the court as to the client, and that you will use no falsehood or deceit, nor delay any person's cause for lucre or malice. So help you God.

## 10. To affiants:

You do swear that the statements of this affidavit, by you subscribed, are true. So help you God. (2679)

Subd. 1 (16-313, 277). Subd. 2 (22-173; 22-177; 23-528). Subd. 5 (16-178, 157). Subd. 9 (104-88, 116+212, 17 L. R. A. [N. S.] 585, 15 Ann. Cas. 197). Subd. 10 (78-311, 81+3).

**5736. Affirmation in lieu of oath**—If any person of whom an oath is required shall declare that he has religious scruples against taking the same, the word "swear" and the words "so help you God" may be omitted from the foregoing forms, and the word "affirm" and the words "and this you do under the penalties of perjury" shall be substituted therefor, respectively, and such person shall be considered, for all purposes, as having been duly sworn. (2680)

**5737. By whom and how administered**—Any officer authorized by this chapter to take and certify acknowledgments may administer an oath, and, if the same be in writing, may certify the same under his official signature, and the seal of his office, if there be one, in the following form: "Subscribed and sworn to before me this ..... day of ....., 19...." The mode of administering an oath commonly practiced in the place where it is taken shall be followed, including, in this state, the ceremony of uplifting the hand. (2681)

See § 5747.

Defective form (59-6, 21, 60+676, 50 Am. St. Rep. 389). By village recorder (68-378, 71+1). By deputy clerk of court (40-65, 41+459).

Failure to raise hand is mere irregularity, which, under § 8560, is no defense (108-121, 121+611).

**5738. Officials may administer, when**—All persons holding office under any law of this state, or under the charter or ordinances of any municipal corporation thereof, including judges and clerks of elections, and all committeemen, commissioners, trustees, referees, appraisers, assessors, and all others authorized or required by law to act or report upon any matter of fact, shall have power to administer such oaths as they may deem necessary to the proper discharge of their respective duties. (2682)

30-140, 14+581.

Cited (109-360, 123+1074).

**5739. Oaths, where filed**—Except as otherwise provided by law, the oath required to be taken and subscribed by any person shall be filed as follows:

1. If that of an officer of the state, whether elective or appointive, with the secretary of state.
2. If of a county officer, or an officer chosen within or for any county, with the county auditor.
3. If of a city, village, or borough officer, with the clerk or recorder of the municipality.
4. If of a town officer, with the town clerk.
5. If of a school district officer, with the clerk of the district.
6. If of a person appointed by, or made responsible to, a court in any action or proceeding therein, with the clerk of such court.
7. If that of a person appointed by any state, county, or other officer for a special service in connection with his official duties, with such officer.

Provided, that if the person taking such oath be also required to give bond, the oath shall be attached to or indorsed upon such bond and filed therewith, in lieu of other filing. (2683)

## ACKNOWLEDGMENTS

**5740. Form of certificate**—The forms hereinafter given may be used in certifying the acknowledgment of written instruments, whether affecting real estate or not, and acknowledgments so taken and certified shall satisfy all requirements of law relating to the execution and recording of such instruments. Every such certificate shall begin with a caption naming the state and the county or place wherein the acknowledgment was taken, and the official signature of the certifying officer, with the seal of his office, if there be one, shall be appended thereto:

## 1. In case of natural persons acting in their own right:

On this ..... day of ....., 19...., before me personally appeared A. B. (or A. B. and C. D.), to me known to be the person (or persons) described in, and who executed, the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

## 2. In case of natural persons acting by attorney:

On this ..... day of ....., 19...., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of C. D.

## 3. In case of corporations or joint-stock associations:

On this ..... day of ....., 19...., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent) of (name of the corporation or association), that the seal affixed to the foregoing instrument is the corporate seal of said corporation (or association), (or, if it have no seal, that said corporation or association has no corporate seal), and that said instrument was executed in behalf of said corporation (or association) by authority of its board of directors (or trustees); and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association). (2684)

66-4, 68+111; 78-249, 80+1056; 93-303, 101+307, 2 Ann. Cas. 989.

**5741. Corporate acknowledgment—Evidence—**Every acknowledgment by or in behalf of a corporation or joint-stock association, made and certified substantially in the form prescribed in § 5740, shall be prima facie evidence of the facts therein recited, that such instrument was executed by authority of its board of directors or trustees, and that the execution and delivery thereof was authorized by law. (2685)

45-238, 47+792; 66-4, 68+111.

**5742. Married persons—**No separate examination of a married woman shall be required, but, if husband and wife join in and acknowledge the execution of any instrument, they shall be described in the certificate of acknowledgment as husband and wife; and if they acknowledge it before different officers, or before the same officer at different times, each shall be described in such certificate as the spouse of the other. (2686)

78-249, 80+1056.

**5743. By whom taken in this state—**The following named officers shall have power to take and certify acknowledgments within the state:

1. Every member of the legislature, so long as he shall remain such, and continue to reside in the district from which he was elected; but he shall receive no fee or compensation for so doing. The form of his official signature in such cases shall be: "A. B., Representative (or Senator) ..... District, Minnesota. My term expires January 1, 19...."

2. The judges and the clerks and deputy clerks of all courts of record, residing within the state, including those of the circuit and district courts of the United States, and resident United States commissioners.

3. Notaries public, justices of the peace, and the clerks or recorders of towns, villages, boroughs, and cities.

4. Court commissioners, registers of deeds, and county auditors, and their several deputies, and county commissioners, all within their respective counties. (2687)

**5744. In other states—By whom taken—**Deeds or other written instruments affecting property in this state may be acknowledged at any place within the United States or in any territory belonging thereto before, and such acknowledgments may be certified by, the following officers:

1. Any judge or justice of the supreme, circuit, or district courts of the United States, or of a court of record of any state, territory, or district therein.

2. The clerk and deputy clerk of any of said courts.

3. Any notary public or justice of the peace, or any commissioner appointed by the governor of this state for that purpose.

But no acknowledgment so certified shall be valid unless taken within the place or territory for which such officer was chosen, or to which the jurisdiction of the court of which he is an officer shall extend. (2688)

**5745. Same—Certificate, how authenticated**—If any certificate authorized by § 5744 be signed by a commissioner appointed by the governor of this state, or by a notary public, clerk of court, or other officer having a seal of office, an impression whereof is affixed, no other authentication shall be required. If by an officer appointed by the governor of such other state or territory, and having no official seal, it shall be sufficient if accompanied by the declaration of the secretary of said state or territory, or his assistant or deputy, under the seal thereof, that at the purported date of said acknowledgment the person certifying held the office under which he assumed to act; or, in lieu thereof, the mode of authentication hereinafter prescribed may be used. In all other cases there shall be attached to such certificate a declaration of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of said court, that he knows the handwriting of the person who signed the same, that at the time of said purported acknowledgment such person held the office under which he then assumed to act, and that he believes the signature subscribed to said certificate to be genuine. (2689)

By deputy clerk of court of record in sister state (51-495, 53-870). By justice of the peace in sister state (24-161).

**5746. In foreign countries**—Such deeds or other instruments may be acknowledged in a foreign country before any notary public therein, or before any minister, charge d'affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officers authorized to perform their duties. And the fact of such acknowledgment shall be certified by the officer taking the same, under his official signature, and his seal of office, if there be one. (2690)

45-277, 47-967.

**5747. Officers and stockholders of corporations**—Any person authorized to take acknowledgments or administer oaths, who is at the same time an officer, director, or stockholder of a corporation, is hereby authorized to take acknowledgments of instruments wherein such corporation is interested and to administer oaths to any officer, director or stockholder of such corporation as such, as fully and effectually as if he were not an officer, director or stockholder of such corporation. ('07 c. 406 § 1)

**5748. Execution according to foreign law**—If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one. (2691)

**5749. Soldiers and sailors abroad**—Any person enlisted or employed in the military or naval service of the United States, and being at any place not within the boundaries of a state thereof, may acknowledge instruments affecting property in this state before any commissioned officer of the United States army or navy, which officer shall certify thereto under his official signature. And, in addition to the other facts required to be stated therein, the certificate shall state that the person so acknowledging, at the time thereof, was employed in such military or naval service, either as an enlisted man, or in some other capacity therein named. (2692)

**5750. Acknowledgments after expiration of commission—Curative—**That all acknowledgments to any conveyances or other instruments heretofore taken by any person previously appointed or elected and then acting after the expiration of his term as a notary public or other officer authorized to take such acknowledgments, be, and the same are hereby, legalized and made of the same validity as though the term of office of such officer had not expired at the time of taking such acknowledgments, and the record of such conveyances or other instruments is hereby declared to be legal and valid, and effectual for all purposes; provided, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state. ('05 c. 50 § 1)

**5751. Acknowledgments before notary of detached county, etc.—Curative—**That all acknowledgments to any conveyances or other instruments heretofore taken, pending proceedings to determine the legality of any new county detached from another county, by a notary public residing in such new county, but using the seal of and laying the venue in such other county, be and the same are hereby legalized and made of the same validity as though taken in such other county before a notary public residing therein; and the record of such conveyances or other instruments are hereby declared to be legal and valid and effectual for all purposes; provided, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state. ('05 c. 275 § 1)

**5752. Acknowledgments before officer of corporations, etc.—Curative—**That all acknowledgments heretofore taken by a notary public who was also an officer, director or stockholder of a corporation organized under the laws of this state, which corporation was interested as a party to the instruments acknowledged, are hereby legalized and made as effectual as if the notary public had not been an officer, director or stockholder of the corporation interested. ('07 c. 89 § 1)

**5753. Pending actions—**The provisions of this act shall not apply in any case where an action is now pending. ('07 c. 89 § 2)

**5754. Acknowledgment before member of legislature—Curative—**That all acknowledgments taken by any member of the legislature of this state as a notary public who at the time of taking such acknowledgment was a member of said state legislature, is hereby legalized and made valid and effectual in all particulars, together with the records thereof where the instrument bearing such acknowledgment has been recorded as provided by law, provided that this act shall not extend to any action or proceeding now pending. ('13 c. 473 § 1)

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## CHAPTER 49

### FEES

**5755. Allowance of fees—**For the services specified in this chapter, the fees hereinafter named shall be allowed. (2693)

**5756. Fees of clerk of district court—1.** For issuing every writ, summons, subpoena, or process, fifty cents.

2. Certified copy of writ, ten cents per folio, and twenty-five cents for certificate.

3. Entering the return of every writ and filing the same, ten cents per folio.

4. Entering an appearance, discontinuance, nonsuit, or default, twenty cents.

5. Entering every rule, order, or motion, in term, ten cents per folio.

6. Certified copies of rules or orders, ten cents per folio, and twenty-five cents for the certificate.

7. Every report upon an assessment of damages or other matter referred to him, seventy-five cents; and ten cents additional for each folio in excess of five folios.